TEACHERS' MANUAL

TO ACCOMPANY

HUFFCUT'S ELEMENTS OF BUSINESS LAW

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BY

ERNEST W. HUFFCUT

REVISED BY

GEORGE GLEASON BOGERT

PROFESSOR OF LAW IN THE CORNELL UNIVERSITY COLLEGE OF LAW

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CHAPTER I

GENERAL SUGGESTIONS

The text consists of four different elements: (1) statements of the law; (2) illustrative examples; (3) practical problems; (4) practical forms. The statements of the law and the illustrative examples should always go together as the basis of the daily work. Whether the problems should be reserved for review, or used *pari passu* with the text and examples, will depend upon the methods of each teacher. It will be easy to assign the problems with the daily work, because the section numbers in "Review Questions and Problems" correspond to the section numbers in the body of the text. The forms should be studied in connection with the text. The briefer forms, as negotiable instruments, should be reproduced by the student in class without the aid of his book. The longer forms, as deeds, etc., might be reproduced with stationers' blanks, to be filled in from data given by the teacher.

The citation of cases in the text has not been deemed useful because students cannot have access ordinarily to the reports. But in this manual the source of each example (other

than merely hypothetical ones) has been indicated by reference to certain "case books" which can be procured by the school library and referred to by the teacher. The abbreviations used are indicated at the head of each chapter. A teacher who wishes to do so can refer the students to these "case books." Of course it will rarely be possible to refer to the regular reports (see section 2). It would be well to have a law dictionary in the school library. Anderson's or Black's is satisfactory.

The modern method of teaching law in law schools is to have the pupil study the actual cases, often without the aid of any text-book (other than a "case book"). If it were practicable to do so, it would be desirable to have such a condensed "case book" for students of commercial law. This book is a kind of compromise in which an attempt has been made to give a great number of practical cases, necessarily condensed, but involving the primary principles. These examples are, therefore, a very important part of the book, and the abstract statements have been reduced to a minimum in order that attention may be fixed on the concrete examples. Often the rule is to be deduced from the example, and in order that the exercise may be more valuable and interesting, the rule is not amplified in the basal text. The teacher will invariably find that interest centers in the concrete case and not in the abstract proposition. Moreover, it is the concrete case that will be remembered rather than the abstract rule. By a study of the "case books" the teacher can easily multiply these concrete cases or furnish additional problems.

An examination should always include concrete cases stated in the form of problems which the student is to solve. Mere definitions and abstract rules, if memorized, will soon be forgotten, while the ability to reach a correct conclusion upon concrete cases will be acquired and retained.

Real property is hardly a part of commercial law and that subject has been treated only in the broadest outlines. It is highly technical, and beyond a few elementary principles cannot be profitably studied in secondary schools. While corporations are very important, the law is almost wholly statutory and highly technical. No layman can safely deal with it without expert advice. The last two chapters, therefore, are the least valuable for high-school students.

It has not been thought possible to arrange this manual by "lessons," since the time given to the subject necessarily varies in different schools. The teacher will assign lessons by sections, giving as many sections to each as the time allowed for preparation and class-room work will warrant.

CHAPTER II

FORMATION OF CONTRACTS

[The citations are to cases in Huffcut and Woodruff's Cases on Contract, 3d ed. **10.** 6/442 means that Example 6 in section 10 will be found in a case printed at page 442 of Huffcut and Woodruff's Cases on Contract, 3d ed. (referred to as H. & W.). This book is published by Banks & Company, Albany, N. Y. A good text-book on contracts is Anson on Contract (Huffcut's edition), published by the Oxford University Press, New York. Cases not in Huffcut and Woodruff are cited in the footnotes by reference letters.]

EXAMPLES

10. 6/510. **14.** 3/6, 4/69 (but see page 71), 5/16, 6[a], 7/21, 8/79. **18.** 1/179, 3/174, 4/205. **19.** 1[b], 3/211, 4/214–220, 220–229, 5/232 (but see page 239), 6/243, 7/246–251. **20.** 1/9, 3–5/263–268. **24.** 2/361, 3/383. **25.** 4–7/370, 376. **26.** 1/415, 2[c], 3[d], 4[e]. **27.** 1[ee], 2/424–428, 3[eee]. **28.** 2[f], 4/291, 6[g], 8/316, 9/278, 10/271, 11[h]. **29.** See H. & W. 302–316. **30.** See H. & W. 348, 351–356. **31.** See H. & W. 357.

a. Carlill *v.* Carbolic Smoke Ball Co., 1893, 1 Queen's Bench (English), 256.

b. Wolford *v.* Powers, 85 Ind. 294.

c. Maxim Nordenfelt Guns Co. *v.* Nordenfelt, 1893, 1 Chancery (English), 630.

d. Gibbs *v.* Consolidated Gas Co., 130 U. S. 396.

e. Oliver *v.* Gilmore, 52 Fed. Rep. 562. (See also H. & W. 376.)

ee. Bixby *v.* Moor, 51 N. H. 402.

eee. Duval *v.* Wellman, 124 N. Y. 156.

f. Coutourier *v.* Hastie, 5 House of Lords Cases (English), 673.

g. Brown *v.* Montgomery, 20 N. Y. 287.

h. Chapman *v.* Rose, 56 N. Y. 137.

ANSWERS TO PROBLEMS

[A few references are to Woodruff's Cases on Domestic Relations and the Law of Persons, 2d ed., published by Baker, Voorhis & Company, New York.]

1. Keller *v.* Holderman, 11 Mich. 248; H. & W. 77. C did not intend to sell and B did not intend to buy the watch. There was therefore no enforceable contract.

A similar case arose where a party of young people in jest challenged a young man and woman to marry, and in the same spirit they agreed, and the ceremony was performed by another member of the party who was a justice of the peace. They never lived together, and both treated the matter as a joke. Doubts arising later as to whether the marriage was binding, an action was brought to have it judicially declared a nullity. The court held that no marriage was intended, and formally annulled it. McClurg *v.* Terry, 21 N. J. Equity Rep. 225; H. & W. 78.

2. Rupley *v.* Daggett, 74 Ill. 351. There is no contract. There is a mutual misunderstanding as to the terms. B offers to sell at $165. C accepts at $65. This may be treated as a mutual mistake (see section 28). A similar case is Rovegno *v.* Defferari, 40 Cal. 459. The case is different where B leads out the colt (Example 1, p. 15), because there B actually offers that colt at $40 and C actually accepts the very offer made by B.

3. Sherman *v.* Kitsmiller, 17 Sergeant & Rawle (Pa.), 45; H. & W. 188. There is no enforceable express contract, because B's promise is too vague to be enforced. The jury cannot estimate her loss in not getting the 100 acres, because no specific land is mentioned. But C may recover upon an implied promise to pay her the reasonable value of her services, that is, in *quantum meruit.*

4. Fairplay School Township *v.* O'Neal, 127 Ind. 95. There is no enforceable contract. B's promise is too indefinite. Had B performed services he could recover their reasonable value as upon an implied promise.

5. Blossom *v.* Dodd, 43 N. Y. 264. C may recover his full loss. A receipt is not to be regarded as an offer to make a contract, and as C was ignorant of the contents he did not accept any such offer. So if a small railway ticket (a bit of pasteboard) contains a clause limiting liability for baggage and the passenger is ignorant of it, he is not bound by it (Malone *v.* Boston & Worcester Railroad, 12 Gray (Mass.), 388; H. & W. 14). But if the ticket is a large one which appears to be more than a mere voucher for passage money, the buyer may be held to have notice of its contents (Fonseca *v.* Cunard Steamship Co., 153 Mass. 553; H. & W. 11). Of course in any case C is bound by the contents if he knows of them, or if he knows by experience that the receipts, etc., of the other party always contain such stipulations.

6. White *v.* Corlies, 46 N. Y. 467; H. & W. 1. No. C had not communicated an acceptance of B's offer; nor had C manifested an acceptance by doing any act which under the terms of the offer unequivocally showed an acceptance. His purchase of material, etc., may as well have been for any other job as for this one. Had C begun work *in the office* he would have manifested an acceptance. B had a right to recall the offer at any time before C accepted it.

7. Hobbs *v.* Massasoit Whip Co., 158 Mass. 194; H. & W. 20. Yes, under the circumstances. A course of dealing between the parties may make silence or inaction equal to acceptance. But had there been no such course of dealing, B would not have been bound to send C any word of refusal nor to take any steps to return the goods. They would have been at C's risk.

8. Minneapolis & St. Louis Ry. *v.* Columbus Rolling Mill, 119 U. S. 149; H. & W. 79. C cannot recover. His first telegram being a qualified acceptance was a refusal of B's offer, and itself a counter offer. B's offer having ended by C's refusal, C's second telegram was again a mere offer which B was at liberty to refuse.

9. Fisher *v.* Seltzer, 23 Pa. St. 308; H. & W. 48. No. B's bid was an offer. At any time before it was accepted by the fall of the hammer B could revoke it. See also White *v.* Corlies in No. 6 above.

10. Moulton *v.* Kershaw, 59 Wis. 316; H. & W. 73. The court held B's letter was not an offer but an invitation to C to deal with him. There was no offer by B to sell any particular quantity. It is like an advertisement stating that B has salt for sale at 85 cents a barrel. If B had written C, "We will sell you whatever amount of salt you may order at 85 cents a barrel," this would have been an offer. (Cases could easily be put which would puzzle lawyers to determine whether B makes an offer, or simply invites C to deal with him.)

11. The State *v.* Clarke, 3 Harr. (Del.) 557; Woodruff's Cases on Dom. Rel. 379. The contract is binding. B is of age on the day preceding his twenty-first birthday. The law does not regard fractions of days. B is regarded as having been born at the first minute of the eleventh, and upon that assumption would really have completed his twenty-one years on the last minute of the tenth. But since fractions of days are disregarded he is taken to be twenty-one at all times during the tenth. He might really make a valid contract nearly forty-eight hours before he is literally twenty-one.

12. Gregory *v.* Lee, 64 Conn. 407; Woodruff's Cases on Dom. Rel. 478. The reasonable value of the room for ten weeks. C has furnished B with a necessary (lodging) for ten

weeks. B is obliged to pay for this not the contract price but the reasonable value not exceeding the contract price. This may be less than $2 a week. But B is not bound for the remainder of the term. C has not furnished B a necessary, and B may avoid an executory agreement even for necessaries.

13. Thompson *v.* Lay, 4 Pickering (Mass.), 48; Woodruff's Cases on Dom. Rel. 452. No. (*a*) An "acknowledgment" is not a promise to pay; (*b*) the promise was conditional and not absolute. There is no ratification which will be enforced.

14. B has ratified by selling the property after he is twenty-one. He would ratify by keeping and using the property. But if B sold or disposed of the property before he was twenty-one, there would be no ratification. Chandler *v.* Simmons, 97 Mass. 508. See Woodruff's Cases on Dom. Rel. 447–449.

15. Yes; in case of personal property C may disaffirm during infancy and recover the property. Towle *v.* Dresser, 73 Me. 252; Woodruff's Cases on Dom. Rel. 389. But an infant's deed of real property cannot be disaffirmed until the infant arrives at his majority. Welch *v.* Bunce, 83 Ind. 382; Woodruff's Cases on Dom. Rel. 391.

16. Cook *v.* Bradley, 7 Conn. 57; H. & W. 166. C cannot recover, as there is no consideration for B's promise. B is under no legal obligation to support his father, and the moral obligation is not sufficient to support a promise. See also Mills *v.* Wyman, 3 Pickering (Mass.), 207; H. & W. 255.

17. Devecmon *v.* Shaw, 69 Md. 199. B is liable, although he is not in any way benefited. It is the detriment to C, relying upon B's promise, that constitutes the consideration. C incurs expenses (although for his own pleasure), relying upon B's promise to reimburse him.

So in Hoshor *v.* Kautz, 19 Wash. 258, B promised C $360 a year for four years if C would attend a specified university as a student. C did so. He may recover upon the promise.

18. Penn. Coal Co. *v.* Blake, 85 N. Y. 226. C does what he is not bound to do, — extends A's time to pay. This supports B's promise.

19. Russell *v.* Cook, 3 Hill (N. Y.), 504; H. & W. 199. B is liable. It was doubtful whether B or C was in the right about the original claim, and a compromise of a doubtful claim will be upheld. C gave up his right to litigate the original claim and took B's promise instead.

20. Smith *v.* Whildin, 10 Pa. St. 39; H. & W. 212. C has done only what as constable in A he is legally bound to do in A, and cannot recover. But if C arrested X in B, or wherever C was not legally bound to act, he could then recover.

21. Hicks *v.* Burhans, 10 Johnson (N. Y.), 242; H. & W. 259. C may recover $100. What C did was at B's request. C could have recovered the reasonable value of his services. When B promised to pay $100, this sum was fixed as the reasonable value.

22. O'Donnell *v.* Leeman, 43 Me. 158; H. & W. 114. B successfully pleads the statute. No such terms as C alleges appear in the memorandum or can be reasonably inferred from it; hence the memorandum is not sufficient. Had C alleged that he was to pay one third down and the balance upon delivery of the deed, such a contract might have been reasonably inferred from the memorandum. (Note that an auctioneer is agent for both parties to sign the memorandum.)

23. Hirth *v.* Graham, 50 Oh. St. 57; H. & W. 157, holds that growing timber constitutes an interest in land and is

therefore within the fourth section requiring a memorandum whatever the price. Probably the weight of authority is in accord with this. But in Sales Act states a sale of growing trees to be cut is a sale of personal property and need only comply with the seventeenth section of the Statute of Frauds. Growing *annual* crops are always treated as personalty.

24. Warner *v.* Texas & Pac. Ry. Co., 164 U. S. 418; H. & W. 141. The railroad company claims that the contract is not by its terms to be performed within a year, and must therefore be in writing to be enforceable. But as the death, or removal, or suspension of business, or other act of C, *might* terminate the contract within a year, it is held not to fall within that provision. It is only when the contract cannot consistently with its terms be performed within one year that it must be in writing to be enforceable. As the court in the above case said, "The question is not what the probable, or expected, or actual performance of the contract was, but whether the contract, according to the reasonable interpretation of its terms, required that it should not be performed within the year."

25. Handy *v.* St. Paul Globe Pub. Co., 41 Minn. 188; H. & W. 363. Yes. At that time it was illegal in Minnesota to publish a Sunday paper. It was illegal for C to contract to aid such illegal result. It is immaterial that C's work may have been done upon a secular day.

26. Reynolds *v.* Stevenson, 4 Ind. 619; H. & W. 367, holds the note illegal because it is illegal to do business on Sunday. Conn., Iowa, Mass., Mich., Minn., and Wis. have held the same. But in Cal., Ill., N. Y., and Ohio it is held to be a legal note and that a contract made on Sunday is not illegal unless it calls for *performance* on Sunday.

27. Mohr *v.* Miesen, 47 Minn. 228; H. & W. 370. No. C is a party to B's gambling transactions and cannot recover what he advanced in order to carry them out. See also Harvey *v.* Merrill, 150 Mass. 1; H. & W. 383.

28. Trist *v.* Child, 21 Wallace (U. S.), 441; H. & W. 389. C's contract is a lobbying contract, and illegal. He can recover nothing.

29. Partridge *v.* Hood, 120 Mass. 403; H. & W. 396. The contract is illegal. It is to stifle a criminal prosecution. C should be careful to make no such promise when arranging for the recovery of his embezzled money.

30. Bernard *v.* Taylor, 23 Ore. 416; H. & W. 451. C may recover against B. The illegal contract was executory. By rescinding it C would aid to prevent its consummation. The law so far favors him. But if the race had been run before C rescinded, he could not have recovered except by aid of some statute. (There are statutes in some states allowing a recovery of money paid on gambling contracts.)

31. Yes. If the seller was negotiating for one thing and the buyer for a different thing, there has been no meeting of the minds of the parties, and neither is bound. Kyle *v.* Kavanagh, 103 Minn. 356; H. & W. 283.

32. Shelton *v.* Ellis, 70 Ga. 297. C. Ry. will succeed. B has taken fraudulent advantage of the mistake with full knowledge that it is a mistake. But the railroad must prove B's knowledge of the mistake.

33. School Directors *v.* Boomhour, 83 Ill. 17; H. & W. 307. In neither case can C recover. If he knew there would be an examination, he was guilty of fraud for which B may rescind the contract. If he did not know, he was mistaken and induced a like mistake by B, and there was therefore a mutual mistake

for which B may rescind. (But probably some jurisdictions might still cling to the old common law rule that there can be no rescission for innocent misrepresentation.)

34. Grigsby *v.* Stapleton, 94 Mo. 423 ; H. & W. 327. *Caveat emptor* (let the buyer beware) is the general rule in the absence of express representations by the seller. But in case of latent, fatal defects, the seller may be bound to disclose the defects. This is such a case. C's fraudulent concealment bars his recovery.

CHAPTER III

OPERATION AND DISCHARGE OF CONTRACTS

[The references are to pages in Huffcut and Woodruff's Cases on Contract.]

EXAMPLES

32. 3[a]. **33.** 1/468, 2/463 (and see H. & W. 473, 485). **34.** 1[b], 2–5/499–514. **36.** H. & W. 532–550. **37.** 4/617, 6/624. **38.** 1/730, 2/732, 3/734, 4[c], 5/735, 6[d], 7/740, 8/749, 9[e], 10[f]. **39.** 1/627–653, 2/671, 3/666, 4/689–692. **40.** 1–2/640, 3/682.

ANSWERS TO PROBLEMS

1. Ward *v.* Savings Bank, 100 U. S. 195; H. & W. 487 n. No. X's contract was solely with B. He is under no obligation to C. The contract was not made with X for C's direct benefit. Had B told X that the abstract was for the use of C, the result might be different.

2. Arkansas Valley Smelting Co. *v.* Belden Mining Co., 127 U. S. 379; H. & W. 499. No. B had a right to choose with whom he would deal in such a sale on credit. He is not bound to look to C for payment or for any other of the buyer's

a. Lumley *v.* Gye, 2 Ellis & Blackburn (English), 216.
b. Robson *v.* Drummond, 2 Barnewell & Adolphus (English), 303.
c. Taylor *v.* Caldwell, 3 Best & Smith (English), 826.
d. Cleary *v.* Sohier, 120 Mass. 210.
e. Lakeman *v.* Pollard, 43 Me. 463.
f. Lacy *v.* Getman, 119 N. Y. 109.

duties. X cannot assign his liabilities. (But X could direct B to deliver to C, and look to X for the performance of the buyer's duties.)

3. Rochester Lantern Co. *v.* Stiles Press Co., 135 N. Y. 209; H. & W. 504. Yes. B is bound to deliver to C, but if C does not pay for the articles when tendered, X may be made to pay. X may assign his right to receive the articles, but not his duty to pay for them.

4. Hayes *v.* Willio, 4 Daly (N. Y.), 259; H. & W. 510. No. Contracts for personal services are not assignable. B may choose whom he will serve.

5. Ray *v.* Thompson, 12 Cushing (Mass.), 281; H. & W. 602. Yes. Although the contract contained a provision by which it might be discharged, B by his own misuse of the horse put it out of his power to discharge it. C was not bound to receive back the injured horse.

6. Dexter *v.* Norton, 47 N. Y. 62; H. & W. 735. No. The destruction of the subject-matter excuses performance. In such cases the parties are assumed to have contracted on the faith of the continued existence of the subject-matter, and the courts imply that condition in the contract itself. Both parties are discharged. Had the cotton not been identified, — had the contract been simply for so many bales of cotton, — the burning of the seller's cotton would not have discharged him.

7. No. The death of either party in a contract for personal services discharges the contract. Lacy *v.* Getman, 119 N. Y. 109.

8. Yes. Most courts allow an action for anticipatory breach even before the time fixed for performance. C was absolved and could sell the iron elsewhere, recovering from B the difference between the contract price and what was received on

the resale. Windmuller *v.* Pope, 107 N. Y. 674. Roehm *v.* Horst, 178 U. S. 1; H. & W. 627.

9. Clark *v.* Marsiglia, 1 Denio (N. Y.), 317; H. & W. 651. C can recover only the damages as of the time of the countermand. He cannot by going on after that add to the damages. C may recover the value of his work and labor, and perhaps the loss of profits from not being allowed to complete the contract. See also Derby *v.* Johnson, 21 Vt. 17; H. & W. 646.

10. Hill *v.* Grigsby, 35 Cal. 656; H. & W. 654. (*a*) Not a good defense. B's promise to pay the $1000 is independent of C's to give the deed. (*b*) A good defense. The last payment and the tendering of the deed are concurrent dependent promises or conditions.

11. If B sues for breach of contract, he will recover the contract price of the potatoes delivered, namely 2000 bushels at 50 cents a bushel, or $1000. As potatoes are now worth 60 cents a bushel and he can sell the remaining 8000 bushels at that price, there is no loss of profits to be added. If B sues in *quantum valebant* for the value of those delivered, disregarding the express contract, he will recover for 2000 bushels at the rate of 60 cents a bushel, or $1200.

12. If the market price is 40 cents a bushel, B should sue for breach of contract. He will recover for 2000 bushels at 50 cents a bushel, namely $1000, and also loss of profits on 8000 bushels, which would be 10 cents a bushel, or $800, making the total damages $1800.

CHAPTER IV

SALES OF GOODS

[The citations are to Burdick's Cases on Sales, 2d ed., published by Little, Brown & Co., Boston. There is also a text-book on sales by the same author. U. S. A. means "Uniform Sales Act."]

EXAMPLES

45. 3/24, 6[a], 7/523, 8[b], 9/538, 10/493. **46.** 1/26–38, 2/38, 3/39, 5/219–243, 6/73. **48.** 1/121–127, 2[c], 3/132–139, 4/142, 5[d], 6[e], 7/182, 8[f]. **49.** Exception [b]/99, 1/159, 2/149, 3/159, 182. **50.** 1/5, 121. **54.** 1[g], 2[h], 3[i]. **55.** 1/300, 2/334, 3/311, 4/321, 5/327, 341, 6[j], 7/363–368. **57.** 1/435, 438, 4/407, 410, 5[k], 6[l]. **58.** 1/583, 2/591, 3[m], 4/629. **59.** 2/564, 164–169. **60.** 3/555, 559.

a. Crawford *v.* Forristall, 58 N. H. 114.
b. Coggill *v.* Ry., 3 Gray (Mass.), 545.
c. Halterline *v.* Rice, 62 Barbour (N. Y.), 593.
d. Delamater *v.* Chappel, 48 Md. 244.
e. Marvin Safe Co. *v.* Norton, 48 N. J. Law Rep. 410.
f. Emery's Sons *v.* Bank, 25 Oh. St. 360.
g. Leavitt *v.* Fletcher, 60 N. H. 182.
h. Pinney *v.* Andrus, 41 Vt. 631.
i. Bryant *v.* Crosby, 40 Me. 9.
j. Goulds *v.* Brophy, 42 Minn. 109.
k. Whiting Co. *v.* White Lead Works, 58 Mich. 29; Cream City Glass Co. *v.* Friedlander, 84 Wis. 53.
l. Beeman *v.* Banta, 118 N. Y. 538.
m. Pollen *v.* Le Roy, 30 N. Y. 549.

ANSWERS TO PROBLEMS

1. D may recover. B gets *no* title by this trick. It is not the case where D deals with B, knowing it is B, and is induced by fraud to part with the goods. Here D never contracted with B at all. B could confer no title upon E, because he had none. It is the same as if B had stolen the goods. Cundy *v.* Lindsay, 3 App. Cas. (English) 459; Burdick's Cases, 495. U. S. A., sect. 23, accord.

2. Yes. A creditor of C seizing the goods to satisfy a judgment is not a purchaser for value. Oswego Starch Factory *v.* Lendrum, 57 Iowa, 573. U. S. A., sect. 24, accord. But it is held otherwise in Van Duzor *v.* Allen, 90 Ill. 499. The first holding is the better and the one generally followed.

3. In England and in a few states, yes. The creditor is deemed a holder for value. But generally in this country the creditor is not deemed a holder for value and B could recover the goods. Goodwin *v.* Mass. Loan Co., 152 Mass. 189.

4. Lee *v.* Griffin, 1 Best and Smith (English), 272; Burdick's Cases, 26. In England this is a sale, and as there was no memorandum, no part payment, or part delivery, the contract is unenforceable. In New York prior to the adoption of the Uniform Sales Act this would have been a contract for work and labor and not of sale, and hence enforceable (Crookshank *v.* Burrell, 18 Johnson (N. Y.), 58; Burdick's Cases, 32). In Massachusetts this would be a contract for work and labor and not of sale, because made to B's special order. Goddard *v.* Binney, 115 Mass. 450; Burdick's Cases, 34. U. S. A., sect. 4, accord with Massachusetts rule.

5. A sale of standing trees to be cut by *buyer* is a sale of an interest in realty. Green *v.* Armstrong, 1 Denio (N. Y.), 550.

But if *seller* is to cut and deliver, it is a sale of personalty. Killmore *v.* Howlett, 48 N. Y. 569. As this is a sale of personalty under $50, it is not within the statute and B's plea is bad. (In case of grass, fruit, etc. to be severed by buyer the sale is of an interest in land; but in case of corn, wheat, and other annual crops it is of personalty. See Burdick's Cases, 38–45.) But see U. S. A., sects. 4, 76.

6. They were accepted when after examining them B purchased. They were delivered and received when C handed them over to a carrier *designated by B.* Cross *v.* O'Donnell, 44 N. Y. 661. But a delivery to a carrier generally, one not designated by the buyer, would not be a receipt of the goods by the buyer. So also a receipt by a designated carrier is not an *acceptance* of the goods by the buyer. The goods must be accepted *and* received. See Burdick's Cases, 219, 243–248. U. S. A., sect. 4, accord.

7. B accepted the carriage when he "approved it." B received the carriage when he drove out in it. He has accepted and received it, and the statute is satisfied. B is liable. Beaumont *v.* Brengeri, 3 Common Bench (English), 301; Burdick's Cases, 215. U. S. A., sect. 4.

8. B is bound. She has accepted and received a part of the goods. The contract was an entirety. Scott *v.* Ry., 12 Meeson & Welsby (English), 33; Burdick's Cases, 250. U. S. A., sect. 4, accord.

9. Howe *v.* Hayward, 108 Mass. 54. This is not part payment or earnest money. It is held that earnest is part payment, and not something else. Here there was no part payment, but a sum put up as a forfeit. The contract does not satisfy the statute, and is unenforceable. See Burdick's Cases, 59. U. S. A., sect. 4, accord.

10. Yes. A stipulation that the vendor shall deliver at a designated place does not prevent the title from passing at the time of the making of the contract. Here the articles were made specific by selection. Terry *v.* Wheeler, 25 N. Y. 520; Burdick's Cases, 121. U. S. A., sect. 19, accord.

11. The buyer is not liable at all. The title will not pass until the whole 119 bales are weighed and sampled. Kein *v.* Tupper, 52 N. Y. 550. (And see Burdick's Cases, 132.) U. S. A., sect. 19, accord.

Suppose the buyer had actually received and taken away the 70 bales. Even then, upon returning them, he would be relieved because his contract was for 119 bales and he is not bound to take less. If the buyer had consumed the 70 bales, and if the seller was unable by no fault of his to deliver the rest, the buyer might be liable for the reasonable value of the 70 bales (not necessarily for the contract price).

12. In New York, yes. Sanger *v.* Waterbury, 116 N. Y. 371; Burdick's Cases, 138. U. S. A., sect. 19, accord. Note that in Kein *v.* Tupper (Problem 12) the cotton was to be also "sampled" and title did not pass until the cotton was sampled. In New York, where the weighing is merely to ascertain the price, the title passes; but in England and in many states it does not. Rule 3 (p. 76) governs. (The New York rule seems the more rational. The goods are specific and certain. Weighing or measuring by the seller is not more burdensome than delivery by the seller; yet delivery to be made by the seller does not prevent the title from passing.)

13. Hurff *v.* Hires, 40 N. J. Law Rep. 581; Burdick's Cases, 99. U. S. A., sect. 19, accord. B can hold the corn. The title passed when the contract was made. It is the same as if C had measured out and delivered to B 200 bushels and

then B had redelivered it to C to keep for him. As C owned only the amount above 200 bushels, that is all his creditors could reach. This is also the New York doctrine (Kimberly *v.* Patchin, 19 N. Y. 330). The doctrine in England and also in some of our states is contrary. See Commercial Nat. Bank *v.* Gillette, 90 Ind. 268; Burdick's Cases, 105.

14. Yes. Risk follows title. Russell *v.* Carrington, 42 N. Y. 118. U. S. A., sects. 19, 22, accord.

15. No. Impossibility excuses performance of this term (see section 38). U. S. A., sects. 7, 8, 19, accord.

16. No. There was an unconditional appropriation of the goods to the contract, and title passed to C, who alone can sue for its loss. Krulder *v.* Ellison, 47 N. Y. 36. (B would have the right of stoppage *in transitu* if C became insolvent. See section 58.) U. S. A., sect. 19, accord.

17. Yes. Title has not passed to C, since B retained it by taking the bill of lading in his own name. This may be rebutted by showing that C took the bill of lading in that way for some other purpose. Burdick's Cases, 182–194. U. S. A., sect. 20, accord.

18. This is a warranty. It is not necessary to use the word "warrant." An express affirmation of quality is sufficient. Chapman *v.* Murch, 19 Johnson (N. Y.), 290; Burdick's Cases, 392. U. S. A., sect. 12, accord.

19. D can recover. There is an implied warranty of title. *Caveat emptor* does not apply to the title. Eichholz *v.* Bannister, 17 Common Bench, New Series (English), 708; Burdick's Cases, 279. U. S. A., sect. 13, accord.

20. There was no implied warranty here. C inspected before purchasing. *Caveat emptor* does apply to the quality.

Salisbury *v.* Stainer, 19 Wendell (N. Y.), 159; Burdick's Cases, 295. Where there is a specific chattel examined by the buyer, the seller satisfies the contract by delivering that chattel. U. S. A., sect. 15, accord.

21. It was submitted to the jury whether the linseed offered answered the description of "Calcutta linseed," and the jury found for C. This was upheld as correct. Wieler *v.* Schilizzi, 17 Common Bench (English), 619; Burdick's Cases, 299. U. S. A., sect. 14, accord.

22. No. There was an implied warranty that the posts should be merchantable. B was entitled to a reasonable opportunity to inspect them. Unloading a part was not necessarily an acceptance. Dowdle *v.* Bayer, 9 N. Y. App. Div. 308. U. S. A., sects. 15, 69, accord.

23. No. Although it was like the sample, there was also a warranty that it (and the sample) should be second quality. The rubber must be not only like the sample but also of second quality. Gould *v.* Stein, 149 Mass. 570; Burdick's Cases, 308. U. S. A., sects. 16, 69, accord.

24. The manufacturer impliedly warrants the article fit for the purpose, but a dealer ordinarily does not. American Forcite Powder Mfg. Co. *v.* Brady, 4 N. Y. App. Div. 95. (But in England and in some of our states the dealer also impliedly warrants the fitness of the article for the purpose. See Burdick's Cases, 350.) U. S. A., sect. 16, accord with English view.

25. (*a*) B may simply hold the horse, retaining his lien; (*b*) or he may resell it and recover from C any loss on the resale; (*c*) or he may rescind the contract and keep the horse as his own and sue C for damages for breach of contract. If he resells, the loss is certain; if he rescinds, it is uncertain and

is measured by the difference between the contract price and the market value of the horse at the time and place of delivery. (In the absence of a market value, the reasonable value of the horse would govern.) U. S. A., sects. 60–64, accord.

In New York, if he adopts the first remedy, he may also sue for the purchase (contract) price of the horse, provided he has made a tender of the horse in conformity to the terms of the contract. Dustan *v.* McAndrew, 44 N. Y. 72; Burdick's Cases, 629 n.

26. None, unless C is insolvent, or unless C should leave the horse with B until the month has expired. U. S. A., sects. 60–64, accord.

CHAPTER V

BAILMENT OF GOODS

[Citations are to Goddard's Cases on Bailments and Carriers, published by Callaghan & Company, Chicago. There is also an outline text by the same author.]

EXAMPLES

63. 1[a], 3–7/23–38. **64.** 2/55, 3–4[b], 5[c], 6/14. **65.** 1/32 *and* [d], 3/103, 4/107 *and* [e], 6/124. **66.** 1[f], 2–3[b], 5/54. **67.** 1/62, 2[g]. **68.** 1/174, 187, 2[h].

ANSWERS TO PROBLEMS

1. No. It is a gratuitous bailment. The bank is liable only for gross negligence or fraud. The act of the cashier was outside the scope of his employment and must be regarded as the act of a stranger. Had the directors been grossly negligent in their oversight of the cashier and the chest of gold, the bank would have been liable. Foster *v.* Essex Bank, 17 Mass. 479; Goddard's Cases, 63.

a. Devalcourt *v.* Dillon, 12 La. Ann. 672.
b. Perham *v.* Coney, 117 Mass. 102. (See also Goddard's Cases, 132.)
c. Booth *v.* Terrell, 16 Ga. 20.
d. Petty *v.* Overall, 42 Ala. 145.
e. Felton *v.* Brooks, 4 Cushing (Mass.), 203.
f. Hadley *v.* Cross, 34 Vt. 586.
g. Britton *v.* Turner, 6 N. H. 481. (See also H. & W. 658 n.)
h. Orchard *v.* Bush, 1898, 2 Queen's Bench (English), 284; and McDaniels *v.* Robinson, 26 Vt. 316.

2. In this case it may be held gross negligence for the bank to allow a speculating cashier to have control of the chest of gold. Preston *v.* Prather, 137 U. S. 604; Goddard's Cases, 32.

3. The trustee is entitled. The bank cannot hold the pledge for any debt except the very one secured by it. As to the $5000, the bank must share *pro rata* with other creditors. Masonic Savings Bank *v.* Bangs, 84 Ky. 135; Goddard's Cases, 103.

4. Yes. C's special property permits him to maintain the action. He may keep what sum compensates for injury to his special property and must pay the balance to X. Little *v.* Fossett, 34 Me. 545; Goddard's Cases, 54.

5. D may recover of X. It is an implied term that the horse shall be fit for use. If he becomes unfit (through no fault of C) the bailment terminates, and C may do what is reasonable to care for the horse. If possible he should return him to X. But if C is on a journey, he may leave the horse in good hands at the place where the journey is interrupted. Leach *v.* French, 69 Me. 389; Goddard's Cases, 48.

6. C proves he demanded the goods. B proves they were stolen (or burned). C must now show that B was negligent. Claflin *v.* Meyer, 75 N. Y. 260; Goddard's Cases, 40.

7. It is certain the landlord is liable if he was at all negligent. But how if he offers to prove there was no negligence? In Sibley *v.* Aldrich, 33 N. H. 553; Goddard's Cases, 195, it was held that the innkeeper was liable even if he used the utmost care. Nothing but an act of God, or of the public enemy, or of the guest himself would bar a recovery.

8. Yes, unless relieved by some statute. A fire is not an act of God, unless it were shown to be the result of a stroke of lightning. Fay *v.* Pacific Imp. Co., 93 Cal. 253; Goddard's Cases, 174.

9. Not as insurers. A sleeping car is not an inn. Pullman Palace Car Co. *v.* Smith, 73 Ill. 360; Goddard's Cases, 178. The company would be liable for any negligence of the porter. A steamer was held to be an inn in Adams *v.* New Jersey Steamboat Co., 151 N. Y. 163; not to be an inn in Clark *v.* Burns, 118 Mass. 275; Goddard's Cases, 186.

10. No. B is not a common carrier. He is a special or private carrier. As such he is liable only for negligence. Allen *v.* Sackrider, 37 N. Y. 341; Goddard's Cases, 219.

11. Yes. B is a common carrier. Fire is not an act of God, unless it were shown to be the result of a stroke of lightning. Hale *v.* New Jersey Steam Navigation Co., 15 Conn. 539; Goddard's Cases, 220.

12. No. B is not liable for loss occasioned by a public enemy.

13. The carrier in whose hands the goods are found damaged is presumed to have caused the damage, and it must rebut this presumption. If it wishes to guard itself, it must examine the contents when it receives the package, or make some stipulation which will exempt it. Morganton Mfg. Co. *v.* Ohio River etc. Ry., 121 N. C. 514; Goddard's Cases, 319: Moore *v.* New York etc. Ry., 173 Mass. 335; Goddard's Cases, 514. (Note that if the first road had contracted simply to *forward* the goods, it might have been liable to the shipper wherever the loss occurred.)

14. It was held that a judgment for C would be sustained under all the circumstances. If, as the jury found, these laces were such as persons of like station under like circumstances might carry for personal adornment, C might properly include them in her baggage. Railroad Co. *v.* Fraloff, 100 U. S. 24; Goddard's Cases, 616. (There was no clause in the ticket limiting liability.)

CHAPTER VI

INSURANCE CONTRACTS

[The citations are to Woodruff's Cases on Insurance, published by Baker, Voorhis & Co., New York. An excellent text-book is Vance on Insurance, published by West Publishing Company, St. Paul.]

EXAMPLES

77. 1/104, 3[a], 4[b]. **78.** 4/248, 5[c], 6/417, 7/428.

ANSWERS TO PROBLEMS

1. C had an insurable interest since he suffered loss by decrease in royalties when B's business property burned. National Filtering Oil Co. *v.* Citizens Ins. Co., 106 N. Y. 535. (C recovers his loss in royalties from the idleness of the works.)

2. Yes. He has a pecuniary interest in the continuance of the corporate business, although he does not own any of its property. Riggs *v.* Commercial Mutual Ins. Co., 125 N. Y. 7; Woodruff's Cases, 41.

3. No insurable interest merely from this relationship. The uncle would have to show that he was dependent upon the nephew, and suffered some loss from his death. Singleton

a. Armour *v.* Ins. Co., 90 N. Y. 450.
b. Alston *v.* Ins. Co., 4 Hill (N. Y.), 329.
c. Smith *v.* Ins. Co., 32 N. Y. 399.

v. St. Louis Ins. Co., 66 Mo. 63; Woodruff's Cases, 53. (The only relationships that seem clearly to give an insurable interest are husband and wife, and parent and child.)

4. No. The concealment of this extra hazard avoids it. Bufe *v.* Turner, 2 Marshall (English), 46.

5. Yes. The presumption is that the company asked concerning all matters upon which it wished information. Omission to volunteer additional information is not, under such circumstances, fraudulent concealment. Rawls *v.* Ins. Co., 27 N. Y. 282. See also Phœnix Ins. Co. *v.* Raddin, 120 U. S. 183; Woodruff's Cases, 108.

6. Yes. This a promissory statement not included in the policy. Kimball *v* Ins. Co., 9 Allen (Mass.), 540; Woodruff's Cases, 118.

7. The warranty is broken. The proof of custom should not be received. The terms of the warranty must govern. C cannot recover for his loss. Ripley *v.* Ins. Co., 30 N. Y. 136.

8. (*a*) The warranty is broken. C could not recover if the house burned. Ins. Co. *v.* Lewis, 4 App. Cas. Dist. Col. 66. (*b*) The warranty is not that the house shall continue to be occupied. C may recover. O'Niel *v.* Ins. Co., 3 N. Y. 122. (Note clause in standard policy as to house becoming vacant. Section 79.)

9. (*a*) The loss is $\$29{,}000 + \$1000 = \$30{,}000$.

The contributors are $\$29{,}000 + \$1000 + \$52{,}000 + \$33{,}000 + \$35{,}000 = \$150{,}000$.

Percentage loss for each, 20%.

B is entitled to $\$29{,}000 - \$5800 = \$23{,}200$.

The ship is entitled to $\$1000 - \$200 = \$800$, but must pay 20% on $\$52{,}000 = \$10{,}400$. Deducting $800 due the ship leaves her total payment $9600.

C pays 20% on $33,000 = $6600.

D pays 20% on $35,000 = $7000.

The total payments aggregate $23,200, or the sum to which B is entitled.

(*b*) The insurer paying B is subrogated to B's rights as above.

Insurers of C and D and the ship must pay their losses due to general average.

CHAPTER VII

CREDITS AND LOANS

[No text can be cited for this chapter.]

ANSWERS TO PROBLEMS

1. This was not a legal tender. B could not compel C to receive more than $10 in subsidiary coins. C may therefore recover costs and interest. Had C refused the tender on some other ground, as that B owed $35, then if B owed only $32 the tender might be held good, since the objection was not to the form but to the amount.

2. Only $11 with interest and costs. The creditor is bound to apply the payment as the debtor directs. C has lost the $25 debt by allowing the statute of limitations to run.

3. To the oldest debt. If there are items on the debit side and items on the credit side, the court will apply the first item on the credit side to the first item on the debit side, and so on, thus extinguishing the oldest items.

4. $215 + $4.41 (interest July 7 to November 10 @ 6%) + $24.25 = $243.66, amount of judgment. $243.66 + $2.61 (interest on judgment November 10 to January 15) = $246.27, amount paid to discharge judgment. (The sale on credit would not bear interest until the term of credit expired, unless it was expressly stipulated for.)

5. In New York C can recover nothing, neither principal nor interest. He has reserved $11 for the use of $95 for one year. In New York this makes the recovery of the loan impossible. In some states C would lose only the interest. In some states (e.g. Massachusetts) the contract would not be usurious, as parties can agree on any sum. (Even if the note were in the hands of a *bona fide* holder for value, it could not be collected by him under the New York statute.)

6. A corporation cannot plead usury in New York. The contract is valid. The law may be different in other states.

CHAPTER VIII

CONTRACT OF GUARANTY

[No text can be cited for this chapter.]

EXAMPLES

87. (1) See H. & W. 127. (3) Raabe *v.* Squier, 148 N. Y. 81. (4) Dock *v.* Boyd, 93 Pa. St. 92. **89.** Davis *v.* Wells, 104 U. S. 159. **90.** (1) Sooy *v.* State, 39 N. J. Law Rep. 135. (2) Magee *v.* Manhattan Life Ins. Co., 92 U. S. 93. **91.** (1) Ball *v.* Coe, 77 Cal. 54. (2) Cragoe *v.* Jones, L. R. 8 Exchequer (English), 81. (3) Gould *v.* Butler, 122 Mass. 498. (5) Wood *v.* Steele, 6 Wallace (U. S.), 80. (6) Lowman *v.* Yates, 37 N. Y. 601.

ANSWERS TO PROBLEMS

1. C cannot recover since B's promise is not in writing. (Suppose it were in writing, could C recover? Yes, because as the promise was given when the contract between X and C was made, C's parting with the goods is a consideration for the promise.)

2. C may recover. (*a*) There is a writing. (*b*) C gave X a valid extension of time by taking his note for thirty days, and this consideration supports B's promise.

3. C must give up his *right* to sue X for thirty days, or he suffers no detriment which will support B's promise. Merely failing to act upon his right is not enough. There must be a binding obligation in some form not to sue X for thirty days.

4. A release of the principal also releases the guarantor. C fails against X. Where there is no reservation of the right against the guarantor, it is presumed that he also is discharged.

5. A release of the guarantor has no effect upon the liability of the principal. C recovers against B.

6. Many states allow C to sue B where he reserves such right. It amounts to this: C sues B and recovers. B then sues X and recovers. C has simply disabled himself from suing X, but not from suing B, nor is B disabled from suing X.

7. B is discharged. It changes his contract without his consent and there was no reservation of right to sue him. Lowman *v.* Yates, 37 N. Y. 601. Had C reserved the right to sue B, the latter would not have been discharged. Tobey v. Ellis, 114 Mass. 120.

8. Before suing B, C must sue X and have an execution upon the judgment returned unsatisfied. But if X were insolvent and the judgment would be worthless, C might sue B without first suing X. Note that this guaranty is that the note can be *collected*, not that it will be paid. See McMurray *v.* Noyes, 72 N. Y. 523.

9. B may recover from X all he has paid C. B is also subrogated to C's rights in the mortgage and may foreclose it to obtain payment. B when he pays the note is entitled to receive it from C, and to sue upon it as holder.

10. (*a*) B may recover the whole from X; (*b*) or B may recover one third from each co-guarantor, D and E; (*c*) or if E be insolvent or out of the jurisdiction, B may in equity (not at law) recover one half from D.

CHAPTER IX

NEGOTIABLE INSTRUMENTS

[The citations are to Colson's Huffcut's Cases on Negotiable Instruments, 2d ed., published by Baker, Voorhis & Co., New York. This contains also the Negotiable Instruments Law and notes on the same.]

EXAMPLES

98. 1/37, 2/197, 204–207, 3/221, 4/37, 42, 5/45, 6/49, 7/n. 54, 8/60, 68, 72, 74, 78, 9/81, 82 n., 10/82–89, 11–12/679, 17/122–131, 18/144, 19/114–118, 20/148. **99.** 1–2/90–91, 3/94. **101.** 1–2/170, 3/624. **102.** 1–2/152. **104.** 1/239. **105.** 1–4/370, 6/387–399, 7/608–611. **107.** 1–6/668–678. **110.** 1/419, 2/434, 3/459, 4/466, 5/471–474. **111.** 1/508–515. **112.** 1/533–538, 2/561, 3/571, 4–5/566, 6/575–579. **114.** 1/725.

ANSWERS TO PROBLEMS

1. A. B. and C. D. are personally liable. The marginal print, "X. Y. Co.," does not carry any presumption that it is the note of the X. Y. Co. The terms "president," "treasurer" are terms of description, as if the signatures had been "A. B., farmer," "C. D., merchant." Casco Nat. Bank *v.* Clark, 139 N. Y. 307; Huffcut's Neg. Inst., 205. (Had the note read "The X. Y. Co. promises to pay," etc., the result would have been different. Had it been signed, "X. Y. Co., by A. B., president, and C. D., treasurer," the result would have been different.)

2. This note is *signed* by A. B. and he is liable. It need not be *subscribed*, that is, signed underneath the note, although that is, of course, the usual practice. Taylor *v.* Dobbins, 1 Strange (English), 399; Huffcut's Neg. Inst., 36.

3. No. The condition that the bank book must accompany the order renders the order nonnegotiable. White *v.* Cushing, 88 Me. 339; Huffcut's Neg. Inst., 46.

4. No. The sum is uncertain, because it is uncertain how much the profits from the sale of the oats will be. Dodge *v.* Emerson, 34 Me. 96; Huffcut's Neg. Inst., 60.

5. Yes. The sum to be paid *at maturity* is certain. That is enough. The addition of uncertain sums thereafter will not affect the negotiability, for the note ceases to be negotiable at maturity in any event. (This assumes that 10% will be a legal rate.) As to engagement to pay interest, see Parker *v.* Plymell, 23 Kan. 402; Huffcut's Neg. Inst., 64; Smith *v.* Crane, 33 Minn. 144; Huffcut's Neg. Inst., 66. As to engagement to pay costs of collection, see Stapleton *v.* Louisville Banking Co., 95 Ga. 802; Huffcut's Neg. Inst., 78.

6. No. A. B. may never be married. The time of payment is not determinable. See Kelley *v.* Hemmingway, 13 Ill. 604; Huffcut's Neg. Inst., 103.

7. Yes. A partnership is sure to be dissolved, because it is always dissolved by the death of a partner. Sackett *v.* Palmer, 25 Barbour (N. Y.), 179; Huffcut's Neg. Inst., 105. ("And after the settling of the books of the firm" renders the above nonnegotiable, because the books may never be settled. See same case.)

8. B is right in this country. A check drawn to a fictitious person is not payable to bearer unless the maker of it knows the payee is fictitious. Here B did not know this. The bank

should have inquired into the indorsements, and if it had done so, it would have discovered that no such persons were in existence, or, if they were, that these were not their signatures. Shipman *v.* Bank, 126 N. Y. 318; Huffcut's Neg. Inst., n. 135.

9. No. The election is by the maker. He may pay in something besides money. Had it read "or at his election," the option would have been with the holder and the note would have been negotiable. Hodges *v.* Shuler, 22 N. Y. 114; Huffcut's Neg. Inst., 94.

10. Yes. Although the note was not really due until July 10, A impliedly authorized any holder to fill the blank; and B's act in writing in June 1 binds A, even though contrary to the facts and the understanding. A would not have been liable to B if B knew he was putting in the wrong date, but would nevertheless be liable to C, the holder in due course. B is liable to C because B himself put in the date. Page *v.* Morrel, 3 Abbott's Ct. App. Dec. (N. Y.) 433; Huffcut's Neg. Inst., 163.

11. No. This was not a note with blanks. It was not any contract. C. D. had no contracting mind. A. B. had no implied authority to fill out a note. C. D. never delivered a note to A. B. Caulkins *v.* Whisler, 29 Iowa, 495; Huffcut's Neg. Inst., 168.

12. E. F. is a mere assignee. He is subject to all defenses that might be set up against A. B. If later E. F. secures A. B.'s indorsement he becomes an indorsee *from that time* and is subject to defenses of which he learned *before* the indorsement but not to those of which he learned *after* the indorsement. Osgood *v.* Artt, 17 Fed. Rep. 575; Huffcut's Neg. Inst., 307.

13. It is the money of A. B., because G. H. had notice from the restrictive indorsement that E. F. was merely the agent of A. B. and had no right to sell the paper. See Huffcut's Neg. Inst., 271–284.

14. A. B. is not liable. "Without recourse" means "I will not become liable for the failure of the maker to pay."

15. Yes. A demand note is overdue six months after issue, except under very exceptional circumstances. E. F. is not therefore a holder in due course and is subject to the same defenses as A. B. See Huffcut's Neg. Inst., 320–337. (Had the note been given in Africa and the maker gone at once to Greenland, six months might have been excused.)

16. Yes. E. F. is a holder in due course. The defense is personal to A. B., or to those who take with notice, or after maturity, or who, in short, are not holders in due course.

17. Not in New York, or wherever the statute provides that instruments given upon a usurious consideration shall be *void.* It depends upon the provisions of the usury laws. For absolute defenses see Huffcut's Neg. Inst., 370–399.

18. No. "The American cases have almost uniformly held that presentment of a bill or note payable at a particular place is unnecessary in order to maintain an action against the acceptor or maker; an omission to do so merely stops interest and damages in case the acceptor or maker was ready at the time and place to pay." Huffcut's Neg. Inst., 480 n., citing authorities.

19. No. By accepting the bill C. D. admits the genuineness of E. F.'s signature and cannot now dispute it to the prejudice of G. H. National Park Bank *v.* Ninth Nat. Bk., 46 N. Y. 77.

20. The acceptor is liable only if the holder shows he has funds of the drawer. Stevens *v.* Androscoggin Water Power Co., 62 Me. 498; Huffcut's Neg. Inst., 673; Wintermute *v.* Post, 24 N. J. Law Rep. 420; Huffcut's Neg. Inst., 677. The drawer was discharged when the holder took a qualified

acceptance without his assent. Walker *v.* Bank, 13 Barbour (N. Y.), 636; Huffcut's Neg. Inst., 677.

21. The drawer is discharged by the unreasonable delay in presentment. It is a bill that must be presented for acceptance in order to fix the due date. Unless it is negotiated at reasonable intervals it should be presented within two or at most three months. A held it six months. Huffcut's Neg. Inst., 679–684.

22. Not under the Negotiable Instruments Law. Notes falling due on Saturday cannot be presented for payment until the following Monday. If that is a holiday, then not until Tuesday. See Section 145, N. Y. Law; Section 85, other states.

23. No. Presentment must be at the place specified. Brooks *v.* Higby, 11 Hun (N. Y.), 235; Huffcut's Neg. Inst., 508.

24. X is liable as maker. A, B, and D are liable as indorsers. E fixed D's liability; D fixed B's; B fixed A's; but B's notice to C is ineffective because if B pays the note he will have no right of recourse against C. See Huffcut's Neg. Inst., 533–538.

25. (*a*) Present the bill on Monday, March 6, at the place of business of C. D. and demand payment.

(*b*) If C. D. refuses to pay, have a notary present the bill (in case P. R. is not himself a notary) and duly protest the bill. Give due notice to E. F. and each indorser who has not waived notice. (G. H. waives all steps. J. K. waives notice, but not presentment and protest.) Notice need be given to A. B. only. It is useless to give it to L. M., because he is not liable as indorser under his indorsement. Of course P. R. need not give notice to N. O., his principal; but P. R. could give notice to N. O., and N. O. could then give it to E. F. and A. B. See Linn *v.* Horton, 17 Wis. 151; Huffcut's Neg. Inst., 561.

26. No. B may set off whatever he lost by the delay. The check if sent direct would have reached Bristol on the 11th and have been paid in full. The custom of sending checks in this way will not excuse the delay and consequent loss. Gregg *v.* Beane, 69 Vt. 22; Huffcut's Neg. Inst., 721. (The Vermont legislature at once passed an act authorizing checks to be collected in accordance with this custom; Laws of 1896, No. 38. Similar acts should be passed in the other states.)

CHAPTER X

PRINCIPAL AND AGENT

[Citations are to Huffcut's Cases on Agency, 2d edition, published by Little, Brown & Co., Boston. There is also a text by the same author, The Law of Agency.]

EXAMPLES

116. 1/*a*, 2/2*a*, 363, 4/647. **117.** 1*a*. **120.** 2/119. **123.** 1/203, 195. **124.** 1/250. **125.** 1/256, 2/296, 4/237–248, 5/265, 8/519, 10/283–288. **126.** 1/317. **129.** 1/390, 391, 2/422, 3/394–397, 4/427, 5/410, 6/422. **130.** 1/483, 2/487–492, 3/492.

ANSWERS TO PROBLEMS

1. It is generally held that an infant's power of attorney to convey lands is void, and cannot be ratified. Philpot *v.* Bingham, 55 Ala. 435; Huffcut's Cases, 15. But it has recently been held that it is only voidable, and can be ratified. Coursolle *v.* Weyerhauser, 69 Minn. 328. The matter is a vexed one. It is generally held that an authority to sell personal property is only voidable, and hence such a sale could be ratified. Hardy *v.* Waters, 38 Me. 450. So of an authority to purchase. Patterson *v.* Lippincott, 47 N. J. Law Rep. 457; Huffcut's Cases, 535.

2. Yes. Until X has notice of the insanity, or until by proper proceedings P has been declared by a competent court

1*a*. Huntley *v.* Mathias, 90 N. C. 101.
2*a*. Bronson's Ex'r *v.* Chappell, 12 Wall. (U. S.) 681.
a. Willcox *v.* Arnold, 162 Mass. 577.

to be insane and his affairs put into the hands of a guardian or committee. Drew *v.* Nunn, L. R. 4 Queen's Bench Division (English), 661; Huffcut's Cases, 22. See also Merritt *v.* Merritt, 43 N. Y. App. Div. 68.

3. Not upon ratification. There was no existing principal when the contract was made. *In re* Northumberland Avenue Hotel Co., L. R. 33 Chancery Division (English), 16; Huffcut's Cases, 57. But it might regard the contract with A as a continuing offer and, when incorporated, accept it. In this case it would be liable from the date of acceptance, whereas in true ratification the contract, when ratified, dates from the time when first made by A. McArthur *v.* Times Printing Co., 48 Minn. 319; Huffcut's Cases, 59.

4. P would not be bound under the English doctrine. In Keighley *v.* Durant, 1901, Appeal Cases (English), 240, it was held that a contract made by a person intending to contract on behalf of a third party, but without his authority, cannot be ratified by the third party so as to render him liable to be sued on the contract, where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal. In Hayward *v.* Langmaid, 181 Mass. 426, however, the court said that "it is necessary in order to a ratification that the act should have been done by one who was in fact acting as an agent, but it is not necessary that he should have been understood to be such by the party with whom he was dealing."

5. No. P could authorize A only by a formal power of attorney under seal to convey lands. He can ratify only in the same form. Heath *v.* Nutter, 50 Me. 378; Huffcut's Cases, 108.

6. The sale by A terminated B's authority, and hence, when B sold, his act was unauthorized. Ahern *v.* Baker, 34 Minn. 98; Huffcut's Cases, 171.

7. No. Death terminates the agency, although unknown either to the agent or the third party. Long *v.* Thayer, 150 U. S. 520; Huffcut's Cases, 185. (This is a hard rule. In Ohio and Nebraska it is held otherwise, where the payment would prejudice the third party.)

8. No. This is a power coupled with an interest which survives death. Stevens *v.* Sessa, 50 N. Y. App. Div. 547. (See Huffcut's Cases, 191–208.)

9. In most states nothing. A has committed a breach of the contract, and cannot therefore maintain any action against P. Timberlake *v.* Thayer, 71 Miss. 279. But in some states A may recover the reasonable value of his services, less P's damages arising from the breach. Britton *v.* Turner, 6 N. H. 481.

10. For the whole period, unless P shows that A could have obtained similar employment and did not. If P shows this, he may deduct what A might have earned in such employment. Cutter *v.* Gillette, 163 Mass. 95; Huffcut's Cases, 222. See also Huffcut's Cases, 224.

11. No. It was A's duty to pay the taxes. He cannot profit by his own neglect of duty. Geisinger *v.* Beyl, 80 Wis. 443; Huffcut's Cases, 264.

12. A must pay over the money to P. It is P's money, not A's. A cannot steal it, because he received it upon an illegal sale from X. Baldwin Bros. *v.* Potter, 46 Vt. 402; Huffcut's Cases, 271.

13. Yes. Had B signed "P by A," there could have been no question. It was merely a ministerial act, since A exercised his judgment and told B to accept. But it would have been enough had B written "Accepted, P." The addition of his own name did not vitiate the acceptance. Commercial Bank *v.* Norton, 1 Hill (N. Y.), 501; Huffcut's Cases, 275. Had A

delegated to B the exercise of discretion, P would not have been bound. See same case.

14. Generally, yes, unless P shows that such goods are not usually sold with a warranty. It is an implied power. Talmage *v.* Bierhause, 103 Ind. 270; Huffcut's Cases, 329.

15. Yes. By leaving the note and mortgage in A's hands P impliedly authorizes him to receive payment. Crane *v.* Gruenewald, 120 N. Y. 274; Huffcut's Cases, 139.

16. The bank loses. Authority to collect does not imply authority to indorse negotiable paper. Jackson *v.* Bank, 92 Tenn. 154. (Note that had X paid money to A instead of giving a check, and A had absconded, the loss would have fallen upon P. A had authority to receive money from P's debtors.)

17. Yes. The broker had no implied authority to collect the price, since he did not deliver the goods. X paid the broker at his peril. He must pay again. Higgins *v.* Moore, 34 N. Y. 417; Huffcut's Cases, 363.

18. X cannot recover. The auctioneer had no authority to receive a check. P was within his rights in repudiating the sale. X knew the limits of the auctioneer's authority. Broughton *v.* Silloway, 114 Mass. 71; Huffcut's Cases, 377.

19. Yes. Had X known that P owned the hotel and A was manager of it, he might reasonably have supposed that A had authority to buy supplies on credit. When he discovers the undisclosed principal he may then recover from him the same as if he had been disclosed at the time of the sale. This is a very anomalous doctrine in the law of contract, but it is well established. Watteau *v.* Fenwick, 1891, 1 Queen's Bench Division (English), 346; Huffcut's Cases, 391. (X could, if he chose, proceed against A for the price instead of against P. Higgins *v.* Senior, 8 Meeson & Welsby (English), 834; Huffcut's Cases, 564.)

20. No. When the undisclosed principal settles with his agent before any claim is made upon him by the third party, he is no longer liable. The third party sold on the credit of the agent, and must now look to him alone. Fradley *v.* Hyland, 37 Fed. Rep. 49; Huffcut's Cases, n. 397; Laing *v.* Butler, 37 Hun (N. Y.), 144; Huffcut's Cases, 396.

21. This is generally held to be a final election to look to the agent alone. Kingsley *v.* Davis, 104 Mass. 178; Huffcut's Cases, 398. But a few courts hold it is not final, and X may still sue P. Beymer *v.* Bonsall, 79 Pa. St. 298; Huffcut's Cases, 397. It is clearly no election if, when X sues A, he does not know A has acted for P. Brown *v.* Reiman, 48 N. Y. App. Div. 295; Huffcut's Cases, 401.

22. Yes. The undisclosed principal may sue upon a contract made for his benefit. Huntington *v.* Knox, 7 Cushing (Mass.), 371; Huffcut's Cases, 422.

23. No. Although A had no implied authority to settle for the breach, still as X suffered A to be the true principal, a settlement with him discharges X from liability to the undisclosed principal. See Montague *v.* Forwood, 1893, 2 Queen's Bench Division (English), 351; Huffcut's Cases, 427.

24. Yes. P cannot keep the benefits of the fraud and repudiate its burdens. If P authorizes A to sell lands, he is liable for the methods employed by A. Haskell *v.* Starbird, 152 Mass. 117; Huffcut's Cases, 475.

25. X may recover. If A *knew* he had no authority, it is deceit. If he believed he had authority, it is not deceit, but he is still liable because he is supposed to "warrant" that he has authority to make any representation he does make. Kroeger *v.* Pitcairn, 101 Pa. St. 311; Huffcut's Cases, 529.

CHAPTER XI

MASTER AND SERVANT

[See Huffcut, The Law of Agency, 2d ed., Book II.]

EXAMPLES

134. (1) Cohen *v.* Dry Dock Co., 69 N. Y. 170. (2) Mulligan *v.* N. Y. etc. Ry., 129 N. Y. 506 (not liable). Palmeri *v.* Manhattan Ry., 133 N. Y. 261 (liable). (3) Stewart *v.* Brooklyn etc. Ry., 90 N. Y. 588. **135.** (1) Fuller *v.* Jewett, 80 N. Y. 46. (2) Crispin *v.* Babbitt, 81 N. Y. 516. (3) Wright *v.* N. Y. Central etc. Ry., 25 N. Y. 562. **136.** (1) Sweeney *v.* Berlin etc. Co., 101 N. Y. 520. (2) Rice *v.* Eureka Paper Co., 174 N. Y. 385. (3) Elliott *v.* Chicago etc. Ry., 150 U. S. 245.

ANSWERS TO PROBLEMS

1. Yes. The brakeman has implied authority to remove trespassers from the train, and the railway is liable for a willful or negligent injury by the brakeman while performing this duty. West Jersey etc. Ry. *v.* Welsh, 62 N. J. Law Rep. 655.

2. If the janitor did this in order to carry on his master's affairs by finishing the sweeping, X is liable. But if the janitor did it merely from a spirit of sport or of malice, X is not liable. It is a question of fact for the jury whether the janitor did it for his own or his master's purposes. Nelson Business College Co. *v.* Lloyd, 60 Oh. St. 448.

3. No. It is held in most states that a switchman and an engineer are fellow-servants. Farwell *v.* Boston & Worcester Ry. Co., 4 Metcalf (Mass.), 49. But in a few states it is held that the fellow-servant doctrine applies only when the servants work together so that one can observe the conduct of the other. Union Pacific Ry. *v.* Erickson, 41 Neb. 1.

4. Not in most states. Although C was a superior officer, he was doing an operative act (not one of the nonassignable duties), and so was a fellow-servant. Crispin *v.* Babbitt, 81 N. Y. 516. But in Ohio X would be liable because there a superior officer is always regarded as a vice principal. Berea Stone Co. *v.* Kraft, 31 Oh. St. 287. The superior-officer doctrine also prevails in Nebraska, Illinois, Texas, Kentucky, and perhaps a few other states.

5. Yes. In doing this act the repairer was a vice principal because he was performing one of the master's nonassignable duties. Fuller *v.* Jewett, 80 N. Y. 46.

6. Yes. But for the promise B would take the risk. After the promise the risk for a reasonable time shifts to X. Collins *v.* Harrison, 56 Atlantic Rep. (R. I.) 678.

CHAPTER XII

PARTNERSHIPS AND JOINT-STOCK COMPANIES

[The citations are to Burdick's Cases on Partnership, published by Little, Brown & Co. There is also a text-book on partnership by the same author.]

ANSWERS TO PROBLEMS

1. In some states parties may be held liable as partners to third persons, even though they are not partners as among themselves. Certain forms of participation in the profits of a partnership may be sufficient to create this partnership liability. For example, in Problem 1, if under the agreement between B, C, and D it was one third of the profits that D "was to have, and not a sum in general equal to that one third, so that he was to take it *as profits* and not as an amount due, — not as a measure of compensation but as a result of the capital and industry" (Leggett *v.* Hyde, 58 N. Y. 272; Burdick's Cases, 50), — some courts would hold D liable as partner to X, irrespective of what was the true relation created by the agreement of B, C, and D among themselves. See Burdick's Cases, 45–62.

In other states, however, if the parties are not partners among themselves, they cannot be held liable as partners even to third persons, except on some principle of estoppel. In these states, therefore, assuming that the agreement between B, C, and D does not make them partners among themselves and that there exists no element of estoppel, D would not be liable

to X. See Burdick's Cases, 62–130. (The question as to when the acts or agreements, or both, of several persons are such as to result in constituting the participants partners, not only among themselves but especially as to third persons, is one of the most difficult in partnership law, and cannot be considered here in detail. The answer to this problem is merely suggestive of some of the questions involved, and also of one phase of the conflict among the authorities.)

2. D was held liable as a partner in Weiss *v.* Weiss, 166 Pa. St. 490; Burdick's Cases, 55, because the 15 % was not in lieu of interest, but in addition to it, and made D a sharer in the profits of a business conducted for the joint benefit of all. (In Pennsylvania a statute provides that a loan of money to a firm upon an agreement to receive a share of the profits of the business as compensation for the use of money and in lieu of interest shall not make the party loaning the money liable as a partner, except as to the money loaned, provided that the agreement for the loan shall be in writing and that the party shall not hold himself out as a general partner. Act of April 6, 1870. This case escapes that statute.) But D would not be liable as a partner under the doctrine laid down in Meehan *v.* Valentine, 145 U. S. 611; Burdick's Cases, 80. This case treats D as a mere creditor, and adopts the rule that mere participation in profits does not make one a partner if there be a contrary intention, — in other words, if the parties are not partners as among themselves. (See answer to Problem 1.)

3. Yes. The name is so nearly that under which he formerly did business as to mislead former customers into believing they are still dealing with J. H. He is estopped. Evans *v.* Hadfield, 93 Wis. 665; Burdick's Cases, 110.

4. (*a*) D is certainly liable on the first sale, for he was in fact a partner (though undisclosed) at that time. See Burdick's

Cases, 396–397. (*b*) D is probably not liable on the second sale, because since X never knew D was a partner he is not misled by receiving no notice when D retires.

5. A must pay $100 into the firm fund. He had no right to make a secret profit on the horse. Bloom *v.* Lofgren, 64 Minn. 1; Burdick's Cases, 501. (The relation between partners is governed largely by principles of agency, and in this case the result is the same as it would have been had A been simply an agent for B and C in the purchase of the horse, and not their partner. See section 125.)

6. No. A's sickness is a risk incident to the relation. B can recover nothing except his share of the profits. Heath *v.* Waters, 40 Mich. 457.

7. Extra compensation was allowed in such a case in Mattingly *v.* Stone, 35 So. W. (Ky.) 921; Burdick's Cases, 516. This is somewhat unusual, but is just where B willfully neglects the business and throws it all upon A.

8. Yes. A had authority to secure this firm debt in this way; but he would not have authority to give a mortgage on real property belonging to the firm. Tapley *v.* Butterfield, 1 Metcalf (Mass.), 515; Burdick's Cases, 211.

9. No. It may bind A's interest in the property, but not B's. Columbia Nat. Bk. *v.* Rice, 48 Neb. 428; Burdick's Cases, 309.

10. No. This is not a trading partnership. C could be bound only if he consents. Pease *v.* Cole, 53 Conn. 53; Burdick's Cases, 314. Real-estate firms, loan firms, insurance firms, milling firms, waterworks firms, printing firms, hotel firms, laundry firms, building firms, mining firms, etc., have all been held to be nontrading firms.

11. Firm creditors will get the $1000 plus $2000 surplus from A's estate, and thus be paid in full. A's creditors will be paid in full $3000. B's creditors will get two thirds of their claims (as $4000 is to $6000). C's creditors will get nothing.

12. Firm creditors in full, leaving $2000 firm assets. A's creditors in full, leaving A $2000 plus one third of $2000. B's creditors divide *pro rata* $4000 plus one third of $2000. C's creditors divide *pro rata* one third of $2000.

CHAPTER XIII

CORPORATIONS

This subject is so largely statutory and so highly technical that problems have been omitted. An excellent little manual is Tompkins on Corporations, published by Baker, Voorhis & Co., New York.

CHAPTER XIV

REAL PROPERTY

Real property is a highly technical and complicated subject, and problems have been omitted. An excellent text-book is Tiffany on Real Property, published by Keefe-Davidson Company, St. Paul. Deeds and other instruments may be obtained at a stationer's.

CHAPTER XV

PERSONAL PROPERTY

An excellent text-book is Brantley on Personal Property, published by Bancroft-Whitney Company, San Francisco.

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